

Message Text

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ACTION L-03

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FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 7420

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E.O. 11652: N/A
TAGS: ACLM, GW
SUBJECT: VON CARSTANJEN PROPERTY CLAIM

REF: STATE 76400

1. EMBASSY GSO(BUFFALO), HOUSING OFFICER
(PRESTON) AND LEGAL ADVISER (PFUND) MET APRIL 6 WITH
VON CARSTANJEN'S US ATTORNEY (KARABIAN), HIS ASSISTANT
(BLEEKA), AND HIS GERMAN CORRESPONDENT ATTORNEY
(LUETKEHAUS) TO DISCUSS SUBJECT CLAIM.

2. KARABIAN'S ARGUMENT WAS TWO-FOLD: (A) THAT THE
CONTRACT PRICE REFLECTED IN FINAL SALES CONTRACT WAS
AGREED TO BY HIS CLIENT UNDER DURESS AND IN FEAR THAT
USG WOULD BE ABLE TO MOVE GERMAN AUTHORITIES TO TAKE
IT AWAY FROM HIM WITHOUT ANY FAIR PAYMENT; AND (B) THAT
USG HAD WITHOUT LEGAL AUTHORITY OR JUSTIFICATION
RETAINED PART OF AGREED PURCHASE PRICE TO EVICT AND RID
SELF OF ASSISTANTS OF TENANT FARMER, AND IN ANY EVENT
HAD NEVER TENDERED OR MADE AVAILABLE PROCEEDS OF
SALE OF IN DEN MAAR PROPERTY AND INCOME FROM ITS
RENTAL TO VON CARSTANJEN, NOR HAD IT GIVEN VON CARSTANJEN
OPPORTUNITY TO TAKE TITLE TO IN DEN MAAR PROPERTY
ITSELF, ALTHOUGH THAT PROPERTY HAD BEEN BOUGHT WITH
MONEY ACKNOWLEDGED TO BE VON CARSTANJEN'S.

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3. ELABORATING ON (A), KARABIAN STATED THAT IT WAS HIS
UNDERSTANDING THAT HIS CLIENT HAD AGREED TO THE FINAL
PER METER PURCHASE PRICES IN THE BELIEF, MISTAKEN AT
THE TIME THE CONTRACT WAS CONCLUDED, THAT THE GERMAN
PRICING AUTHORITY HAD TURNED DOWN A HIGHER PER SQUARE
METER PRICE. EMBOFFS STATED THAT WHILE THEY WERE

GENERALLY AWARE OF THE ROLE PLAYED BY THE PRICING AUTHORITY IN SUCH LAND TRANSACTIONS AT THE TIME, THEY HAD NO RECORDS REFLECTING THE ROLE OF THE PRICING AUTHORITY IN CONNECTION WITH THIS PARTICULAR TRANSACTION; SUCH A ROLE WOULD PRESUMABLY BE REFLECTED IN THE RECORDS THAT HAD LONG AGO BEEN RETIRED.

4. RE (B), KARABIAN SEEMED TO SUGGEST THAT WHILE THERE HAD BEEN A PROVISION IN THE SALES CONTRACT THAT CERTAIN FUNDS WOULD PASS ONLY IF THE TENANT FARMER ("PAECHTER") HAD PROMISED TO VACATE THE SUBJECT PROPERTY, THE SALES CONTRACT WAS SILENT ON ANY RESPONSIBILITY OF THE OWNER (VON CARSTANJEN) WITH RESPECT TO THE ASSISTANTS (FARM WORKERS) OF THE TENANT FARMER WHO, PRESUMABLY, HAD A RELATIONSHIP WITH THE TENANT FARMER BUT NOT WITH VON CARSTANJEN. EMBOFFS SUGGESTED THAT WITHOUT HAVING THE RECORDS THAT MIGHT REFLECT THE INTENTIONS OF THE PARTIES, THEY COULD ONLY ASSUME THAT THE BASIC AND REASONABLE PURPOSE OF THE USG WAS TO RECEIVE TITLE TO THE LAND WITHOUT ITS BEING SUBJECT TO ANY RIGHTS BY THE FORMER OWNER, HIS TENANT FARMER OR ANYONE ELSE. THE OWNER AND HIS TENANT FARMER MUST REASONABLY HAVE BEEN PRESUMED BY THE USG, AS A TWO-SOME, BEST TO KNOW WHO WAS ON THE LAND AND NEEDED TO BE REMOVED. THEY COULD BE PRESUMED TO HAVE MADE AN UNDERTAKING ON THEIR OWN BEHALF AND WITH RESPECT TO ANY OTHERS, INCLUDING LIMITED OFFICIAL USE

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AS IT TURNED OUT, ASSISTANTS OF THE TENANT FARMER. KARABIAN ADMITTED THAT HIS CLIENT HAD NEVER SOUGHT OR DEMANDED PAYMENT OF THE PROCEEDS OF THE SALE OF THE IN DEN MAAR PROPERTY OR FROM THE RENTAL THEREOF. LUETKEHAUS SUGGESTED THAT POSSIBLY HE DID NOT KNOW OF THAT PROPERTY AND THUS HAD NO BASIS FOR SEEKING PAYMENT. EMBOFF SAID THAT THE LIKELY LEGAL PRESUMPTION WOULD BE THAT HE DID NOT CLAIM THESE FUNDS BECAUSE HE WAS CONTESTING THE BASIC SALES CONTRACT AND DID NOT WANT TO RATIFY IT BY DEMANDING/ACCEPTING PROCEEDS AND RENTAL FEES FROM THE IN DEN MAAR PROPERTY.

5. KARABIAN STATED THAT IT WOULD PROBABLY NOT BE POSSIBLE TO RECONSTRUCT ALL ASPECTS OF THE LENGTHY SALES NEGOTIATIONS, ADMITTED THAT HIS CLIENT WAS ECCENTRIC, UNPREDICTABLE AND FREQUENTLY HARD TO LOCATE, AND THAT HIS CLIENT HAS NOT ALWAYS ACTED IN HIS OWN BEST INTERESTS. IT WAS KARABIAN'S AIM TO SEEK TO REACH A SETTLEMENT FOR HIS CLIENT WITH THE USG THAT HE COULD

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"SELL" TO HIS CLIENT.

6. ASKED WHAT PRECISELY HE WAS ASKING FOR, AS A
STARTING POSITION, KARABIAN NAMED THE FOLLOWING:

(A) THE DIFFERENCE BETWEEN THE VALUE OF THE PRO-
PERTY SOLD BASED ON THE HIGHER PRICE APPROVED BY THE
GERMAN PRICING AUTHORITY AND THE ACTUAL SALE PRICE,
PLUS INTEREST;

(B) THE RENTAL AND ANY OTHER INCOME FROM THE IN
DEN MAAR PROPERTY WHILE IT WAS ADMINISTERED BY THE USG,
PLUS INTEREST; AND

(C) EITHER:

(1) THE VALUE OF THE IN DEN MAAR PROPERTY
TODAY, OR

(2) THE AMOUNT STILL WITHHELD FOR THE PUR-
CHASE OF THE IN DEN MAAR PROPERTY PLUS
THE DIFFERENCE BETWEEN THE SALE PRICE
AND THE PRUCHASE PRICE OF THAT PROPERTY,
PLUS INTEREST.

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KARABIAN STATED THAT WHEN HE SPOKE OF INTEREST ON THE ABOVE AMOUNTS, HE DID NOT MEAN THE MERE BANK INTEREST, BUT ALSO CONSIDERATION OF THE FACT THAT AT THE TIMES IN QUESTION THE AVAILABILITY OF SUCH SUMS IN THE FRG REPRESENTED POTENTIAL FOR INVESTMENT WHICH WOULD HAVE A MUCH HIGHER RATE OF RETURN THAN BANK LOAN INTEREST IN VIEW OF THE THEN BURGEONING FRG ECONOMY. KARABIAN ALSO STATED THAT HE UNDERSTOOD THAT THE IN DEN MAAR PROPERTY HAD BEEN SOLD TO THE CITY OF BONN, WHICH MADE IT POSSIBLE THAT THE SALE PRICE DID NOT REPRESENT THE FULL FAIR MARKET VALUE. PRESTON WAS ABLE TO STATE THAT AN EXPERT OPINION CONCERNING THE VALUE OF THE PROPERTY HAD BEEN OBTAINED AT THE TIME AND WAS AVAILABLE TO CONFIRM THAT THE SALE PRICE TO THE CITY OF BONN WAS IN KEEPING WITH THE APPRAISED MARKET VALUE.

7. IN REACTION TO THE ABOVE, EMBOFFS POINTED OUT THAT WHILE THERE WAS UNDOUBTEDLY INTEREST IN SETTling THIS MATTER ONCE AND FOR ALL, THE FREEDOM OF THE DEPARTMENT TO SETTLE WAS CIRCUMSCRIBED BY THE NEED TO JUSTIFY THE TERMS OF ANY SETTLEMENT MADE BY PAYMENTS OF TAXPAYER MONEY; THIS WOULD BE PARTICULARLY TRUE WERE THE DEPARTMENT TO NEED TO SEEK AN AUTHORIZATION AND APPROPRIATION FOR THE NECESSARY FUNDS TO BE ABLE TO SETTLE. WHILE IT WOULD BE ATTRACTIVE TO AVOID HAVING TO RECONSTRUCT ALL ASPECTS OF THIS MATTER AS NEARLY AS POSSIBLE BASED ON STILL-AVAILABLE RECORDS, THE TERMS OF ANY SETTLEMENT WOULD HAVE TO BE FULLY JUSTIFIABLE.

8. COMMENT: WE BELIEVE THAT KARABIAN'S FOCUS IS ON THE IN DEN MAAR TRANSACTION FOR WHICH HE IS SEEKING A SUFFICIENTLY ATTRACTIVE SETTLEMENT, ENHANCED BY THE LIMITED OFFICIAL USE

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GENERAL DOUBTS HE THROWS ABOUT CONCERNING THE BASIC SALES PRICE CONCERNING WHICH HE IS NOT LIKELY TO WISH TO ENGAGE IN GREAT ARGUMENTS. RE THE ORIGINAL SALE, HE SEEMS LARGELY TO BE SAYING THAT VON CARSTANJEN THINKS HE WAS CHEATED, AND THIS VIEW IS GOING TO AFFECT WHAT HE IS WILLING TO ACCEPT IN SETTLEMENT FOR THE IN DEN MAAR PROPERTY.

9. AT THEIR REQUEST THE EMBASSY'S HOUSING OFFICER TOOK KARABIAN AND HIS PEOPLE TO THE IN DEN MAAR PROPERTY. THEY SEEMED DISAPPOINTED WITH ITS SIMPLICITY AND LIMITED VALUE (ALTHOUGH ITS CURRENT VALUE HAS BEEN ENHANCED BY THE INSTALLATION, SINCE ITS SALE TO THE CITY, OF CENTRAL HEATING AND OTHER IMPROVEMENTS), WHICH LUETKEHAUS ESTIMATED AT ABOUT DM 120,000.

10. EMBASSY HAS NO RECORDS CONCERNING THE COURT OF CLAIMS HEARINGS IN 1956. THE EMBASSY IS REVIEWING ITS RECORDS ON THE IN DEN MAAR PROPERTY FOR RELEVANT DOCUMENTS OF WHICH THE DEPARTMENT SHOULD BE AWARE. WE SHALL POUCH THESE IN THE NEAR FUTURE. AS FOR THE ORIGINAL CONTRACT NEGOTIATIONS, CONDUCTED BY THE GERMAN AUTHORITIES ON OUR BEHALF WITH VON CARSTANJEN'S REPRESENTATIVES, THE EMBASSY HAS ONLY INCOMPLETE FILES WITH DUPLICATES FROM THE COMPLETE FILE THAT WE ASSUME WAS LONG AGO RETIRED.

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11. DEPARTMENT SHOULD BE AWARE THAT KARABIAN HAS SOME DEPARTMENT INTERNAL RECORDS RELEVANT TO THIS CLAIM, SUCH AS BONN'S 2008 OF DECEMBER 4, 1963, WHICH REFERENCED DEPTTEL 1611 AND REFERS TO EMBDES 116, JULY 22, 1960 (HE SAYS HE DOES NOT HAVE THE LATTER TWO). WE DO NOT KNOW HOW, FROM WHOM, AND WHERE HE WAS ABLE TO OBTAIN THIS BACKGROUND. BONN'S 2008 STATES THAT COST OF IN DEN MAAR PURCHASE AND CONSTRUCTION WAS DEDUCTED BY HICOG RPT HICOG FROM CONTRACT PRICE OWED TO VON CARSTANJEN UPON UNDERSTANDING THAT TITLE TO LAND AND BUILDING WOULD BE TRANSFERRED TO HIM BY HICOG (IT THEN REFERENCES ENCLOSURE 1 OF EMBDES 116, JULY 22, 1960). THIS INDICATES POSSIBILITY THAT RETIRED RECORDS OF SALE NEGOTIATIONS MAY NOT BE DEPARTMENT'S BUT HICOG'S, POSSIBLY NOW MAINTAINED BY US ARMY.

12. WITHOUT KNOWLEDGE OF DISPOSITION OF PROCEEDS OF SALE OF IN DEN MAAR PROPERTY AND INCOME FROM ITS RENTAL (ABOUT DM 110,000 AND 31,000, RESPECTIVELY), RECORDS OF THE SALE NEGOTIATIONS, OR KNOWLEDGE OF LATITUDE DEPARTMENT MAY HAVE TO NEGOTIATE SETTLEMENT, THERE IS LITTLE THE EMBASSY WAS ABLE TO DO BUT LISTEN TO KARABIAN AND ARGUE SPECULATIVELY. WE BELIEVE THAT AFTER LIMITED OFFICIAL USE

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DEPARTMENT HAS EXAMINED AVAILABLE FILES IN US AND MATERIALS WE WILL POUCH, DEPARTMENT IS IN BEST POSITION TO REACH CONCLUSION CONCERNING THE POSSIBILITY OF A NEGOTIATED SETTLEMENT AND ACTUALLY TO CONDUCT DISCUSSIONS TOWARDS THAT END. EMBASSY STANDS READY TO HELP AS BEST IT CAN IN THE CIRCUMSTANCES WITH STAFF THAT WAS NOT A PARTY TO THE ORIGINAL CONTRACT NEGOTIATIONS BUT DOES HAVE SOME BACKGROUND AND FILE INFORMATION ON THE IN DEN MAAR PROPERTY. WE ARE SEEKING AN ESTIMATE OF THE CURRENT VALUE OF THAT PROPERTY AS A MEASURE OF THE AMOUNT INVOLVED IN (C)(1) OF PARA 6, ABOVE. STOESEL

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